Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NUMBER: 85-1746

THE SUPREME COURT OF THE UNITED STATES

_____ TERM

SANFORD J. MARGULIS,

PETITIONER

VS.

JEAN MILLER, MARY C. CAETANO, HAROLD THOMPSON, SUZIE SWENSON, MORRIS R. PION, ALEX BOSS, WILLIAM BERLIN, DANI CODY, NIKKI GOMEZ, LARRY COOK, FRANCIS J. KILCOYNE, LAWRENCE ADAMS, CLARENCE BOYD, JR., DARLEE CROCKETT, AND MERRILL GROAT,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SANFORD J. MARGULIS, Petitioner, Pro Se
1839 Madison Avenue
San Diego, California 92116
(619) 295-8657

COUNTY COUNSEL OF SAN DIEGO COUNTY
Attorney for Respondents
1600 Pacific Highway
San Diego, California 92101

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

1. Whether Section 1983 of Title 42 of the United States Code creates any liability?
2. Whether the Constitution and substantive federal law alone create or acknowledge liability as to equal protection of the law, due process of law, freedom of speech, and right to petition the government for redress of grievances?
3. Whether Section 338, subdivision 1 of the California Code of Civil Procedure applies to liability created by the Constitution?
4. Whether Section 343 of the California Code of Civil Procedure applies to liability created by the Constitution?
5. Whether Constitutional liability of federal defendants under equal protection, due process, freedom of speech, and right to petition is the same liability as county government defendants, although arising from different Constitutional

provisions?

6. Whether remedies afforded against federal defendants under the authority of the Bivens case and others of the Court are the same remedies afforded against county government defendants under the authority of Section 1983 of Title 42 of the United States Code?

PARTIES

Petitioner: Sanford J. Margulis, Plaintiff-Appellant below.

Respondents: All Defendants and Appellees below, as follows:

1. Jean Miller, named but not found or served.
2. Mary C. Caetano, served.
3. Harold Thompson, served.
4. Suzie Swenson, served.
5. Morris R. Pion, served.
6. Alex Boss, served.
7. William Berlin, served.
8. Dani Cody, aka, served.
9. Nikki Gomez, aka, served.
10. Beverly Parker, aka, named, but not

found or served.

11. Linda Cook, aka, named, but not found or served.

12. Larry Cook, served.

13. Francis J. Kilcoyne, served.

14. Lawrence Adams, served.

15. Clarence Boyd, Jr., served.

16. Darlee Crockett, served.

17. Merrill Groat, served.

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Other Authority:

Black's Law Dictionary, 5th Edition, 1979, West Publishing, p.1281..p.18.

REFERENCE TO REPORT OF JUDICIAL OPINION

This refers to the opinion of the United States Court of Appeals for the Ninth Circuit attached hereto in the Appendix.

STATEMENT OF JURISDICTION

1. The Judgment of the United States Court of Appeals for the Ninth Circuit in this case was entered and filed on December 11, 1985.

2. The statute upon which Petitioner

believes that jurisdiction in this Court is based is Title 28 of the United States Code, Section 2101(c) prescribing timeliness of ninety (90) days for filing this Petition.

PROVISIONS OF THE CONSTITUTION, FEDERAL, AND STATE STATUTES UPON WHICH THIS CASE IS BASED:

Constitution of the United States of America:

1. Amendment I
2. Amendment V
3. Amendment XIV, Section 1.

Federal Statutes:

Title 42 United States Code, Sections:

1981

1982

1983

2000

California state statutes:

Section 338, subdivision 1 of the Code of Civil Procedure

Section 343 of the Code of Civil Procedure

TEXT OF AMENDMENTS TO THE CONSTITUTION

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEXT OF FEDERAL STATUTES

Title 42 United States Code, Section 1981

Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Title 42 United States Code, Section 1982

Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Title 42 United States Code, Section 1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Title 42 United States Code, Section 2000e-2.

Unlawful employment practices

(a) It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respct to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Title 42 United States Code, Section 2000e-3.

Other unlawful employment practices

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on -the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he

has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

TEXT OF CALIFORNIA STATE STATUTES

Section 338, Subdivision 1 of the California Code of Civil Procedure:

Three years; statutory liability; exception: trespss or injury to realty; taking, detaining or injuring goods or chattels; fraud or mistake; bond of public official; notary public; slander of title; false advertising; water quality and hazardous wastes

Within three years:

1. An action upon a liability created by statute, other than a penalty or forfeiture.

Section 343 of the California Code of Civil Procedure:

Four years; relief not otherwise provided for

Actions for relief not hereinbefore provided for. An action for relief not hereinbefore provided for must be commenced within four years after the cause of action shall have accrued.

STATEMENT OF THE CASE

The basis for subject matter jurisdiction in the United States District Court for the Southern District of

California was Title 28 United States Code, Sections 1343(a)(3) and 1331, and Amendment XIV and I of the Constitution of the United States, and Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

Nature of the Case: The case is a civil rights action based on alleged violation of federal constitutional rights and corresponding liabilities created by Amendment Fourteen equal protection and due process and Amendment One Freedom of Speech and Right to Petition the government for redress of grievances, and appropriate equitable remedies and punitive damages incident thereto sought pursuant to Title 42 United States Code Section 1983 thereof. The case also involves a second cause of action on behalf of certain classes of persons similarly aggrieved to Petitioner based on alleged violation of federal constitutional rights and corresponding liabilities created by

Amendment XIV due process of law. The Petitioner herein, was the Plaintiff and Appellant, in the District Court and in the Court of Appeals, respectively.

The course of proceedings and disposition of the case in the trial and appellate courts: The trial court action was commenced by filing the original Complaint on April 13, 1983. The Second Amended Complaint in issue in this case was filed in the trial Court on December 19, 1983. The Respondents-Defendants moved the trial court for an order and judgment thereon for dismissal of the Second Amended Complaint on the merits, based on the defense of the statute of limitations, Section 338, Subdivision 1 thereof of the California Code of Civil Procedure. Petitioner, Plaintiff below, opposed this motion with appropriate papers and appearance at the hearing. The trial court granted Respondents-Defendants motion to dismiss at the hearing on the motion on

February 6, 1984. In due course and in a timely manner, the Judgment of the trial Court was entered and the Petitioner-Plaintiff took a timely appeal to the United States Court of Appeal for the Ninth Circuit and the Court affirmed the Judgment of the District Court and filed and entered the Judgment of Affirmance on December 11, 1985. The Court of Appeals affirmed the Judgment of the District Court on the grounds that the three-year statute of limitations of Section 338, subdivision 1 of the California Code of Civil Procedure, applicable to claims based upon liability created by statute, was applicable to the instant case due to the pleading of Section 1983 of Title 42 of the United States Code. The Petitioner argued that Section 343 of the Code of Civil Procedure, a four-year statute of limitation, applied to the instant case regardless of Section 1983 because the liability was based upon

applicable Constitutional provisions and not upon any substantive statutory provisions. The Court of Appeals rejected this argument stating that the Section 343 four-year statute of limitations applies only to constitutional violations by federal defendants only.

ARGUMENT

POINT 1

SECTION 1983 OF TITLE 42 UNITED STATES CODE CREATES NO LIABILITY

There is no federal statute of limitation for claims of constitutional liability and corresponding rights, nor for their remedies invoked by Title 42 United States Code Section 1983, applicable to this case. Ibid. In the absence of a federal statute of limitation, the applicable statute of limitation is adopted from the law of the state in which the federal trial court sits. 42 USC 1988. The District Court and the Court of Appeals erroneously applied the three-year

statute of limitation pursuant to Section 338-1 CCP. This statute applies only to claims based upon statutes which create a liability. Ibid.

The crucial question is what constitutes liability under California State law interpreting the state statute of limitations. 42 USC 1988 and Section 338-1 CCP. A consensus of California cases defines liability as a duty or responsibility. Union Oil v. Basalt, 30 Cal.App.2d 317, 86 P.2d 139, 141, speaking of a duty. Vandegrift v. Riley, Cal. Sup., 16 P.2d 734, 736, also speaking of a duty. Italiani v. Metro-Goldwyn, 45 Cal. App. 2d 464, 114 P.2d 370, 372, speaking of a responsibility. The connected crucial question is what constitutes liability created by statute under California state law. A consensus of California cases declare such liability created by statute to be such where a duty exists only by virtue of a statute, or an obliga-

tion is fixed by the statute itself, and that these duties or obligations would not exist but for the statute. Fidelity v. Lindholm, 66 F.2d 56, 89 A.L.R. 279 (CA9, 1933); Banks v. Yolo County, 104 Cal. 258, 37 P. 900; County of Los Angeles v. Ballerino, 99 Cal. 593, 32 P. 581; 34 P. 329; Abram v. San Joaquin, 46 FS 969, D.C. Southern Calif., (1942).

In analyzing the nature of liability and especially liability created by statute as phrased by Section 338-1 CCP, supra, it is clear that the duties, responsibilities, and obligations composing liability of defendants in any action also imply corresponding rights of Plaintiffs. Conversely, rights of one party imply liability of another adverse party. Rights and liabilities together constitute the substantive law. Substantive law creates rights on the one hand and duties and obligations of liability on the other hand. Kilbreath v. Rudy, 16 Ohio St. 2d

70, 242 N.E. 2d 658, 660 and Black's Law Dictionary, 5th Edition, 1979, West Publishing, p. 1281. Substantive law is also to be distinguished from adjective, or procedural or remedial law. Ibid. Procedural or remedial law prescribes methods of enforcing the rights and implied liabilities of the substantive law. Ibid. Thus, both the substantive law and procedural or remedial law, although different, operate as mutual partners in achievement of justice. Ibid.

Title 42 USC Section 1983 is a remedial law only and creates no liability or rights under the substantive law whatsoever. Chapman v. Houston and Gonzalez v. Young, 441 US 600, 99 S.Ct. 1905, 60 L.Ed. 2d 508 (1979); Lake Country v. Tahoe, 440 US 391,59 L.Ed. 2d 401, 99 S.Ct. 1171 (1979), p.401, footnote 17; Doe v. Klein, 599 F.2d 338 CA9, (1979). Since Section 1983 does not create any liability whatsoever, that Section and the

Second Amended Complaint was not subject to the three-year statute of limitation of Section 338-1 CCP applicable only to statutes creating liability. Ibid.

Petitioner made these arguments in the District Court and in the Court of Appeals for the Ninth Circuit and both Courts rejected these arguments disregarding the clear contrary rule of the Supreme Court in Chapman, Gonzalez, and Lake Country, supra.

POINT 2

ONLY THE CONSTITUTION OR SUBSTANTIVE STATUTES CREATE OR ACKNOWLEDGE LIABILITY AS TO EQUAL PROTECTION OF THE LAW, DUE PROCESS OF LAW, FREEDOM OF SPEECH, AND RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.

Constitutional rights and liabilities can be analyzed and understood as corresponding functions of each other as analyzed in Point 1, supra. Likewise, the inseparable function of rights and liabilities

is applicable to their contemporaneous creation. Ibid, supra.

The original source and creation of rights and liabilities for equal protection, due process, free speech, and right to petition is the federal constitution, specifically Amendments Fourteen and One, respectively. Ibid. Congress has enacted Title 42 USC 1981, 1982, and 2000, et seq. in furthernace of Amendment Fourteen and One, in some respects. Ibid. Petitioner had not pleaded these statutes as the basis of liability and instead pleaded only the original constitutional provisions. The Supreme Court has long held that the Constitution has substantive liability and rights functions while Section 1983, has a remedial function only. Chapman, Gonzalez, Lake Country, all supra, and Green v. Peacock, 384 US 808, 829, 830, 86 S.Ct. 1800, 16 L.Ed. 2d 944 (1965); Adickes v. Kress, 398 US 144, 151, 90 S.Ct. 1598 (1970); Davis v. Passman,

442 US 235, 239, note 16, 99 S.Ct. 2264, 2273, (1979); Hague v. Committee, 307 US 496, 525-527, 59 S.Ct., 968-69 (1939); Douglas v. City of Jeanette, 319 US 157, 161-162, 63 S.Ct. 880 (1943).

Petitioner made these arguments in the District Court and in the Court of Appeals for the Ninth Circuit and both courts rejected these arguments disregarding the clear contrary rule of the Supreme Court in the above cases, cited in this Point.

POINT 3

SECTION 338, SUBDIVISION 1 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE DOES NOT APPLY TO LIABILITY CREATED BY THE CONSTITUTION

Section 338-1 CCP applies only to liability and corres-ponding rights, not to jurisdiction and remedies; the Section also applies to statutes, not to the federal Constitution. See supra. Ibid. The only statutes pleaded in the Second Amended Complaint were jurisdictional and remedial, not substantive.

Petitioner made these arguments in the District Court and in the Court of Appeals for the Ninth Circuit and both Courts rejected these arguments disregarding the clear contrary rule of the Supreme Court in the above cases, cited in Points 1 and 2 above.

POINT 4

SECTION 343 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE APPLIES TO LIABILITY CREATED BY THE CONSTITUTION

The purposeful language of Section 338-1 CCP intends only statutes, not the federal Constitution. Ibid. The California legislative silence as to the federal Constitution is understandable as being outside the scope of state government. The purpose of Section 343 CCP is to deal with and apply to such contingencies which could occur in the scheme of federalism. The Ninth Circuit has recognized the desireability of the application of the four-year limitation period

under Section 343 to federal constitutional matters rather than Section 338-1 recognized as applicable only to statutory matters. Marshall v. Kleppe, 637 F. 2d 1217, 1223-24, CA9 (1980). However, the Ninth Circuit in the instant case has limited the application of the rule of Marshall, supra, only to cases where the defendants were federal employees and not state or county employees as in the instant case. All cases of constitutional liability and corresponding rights, whether those pleaded in Marshall, supra, or pleaded in the instant case, are liabilities and rights implied or expressed in the Constitution. The only difference between Marshall and the instant case, with respect to constitutional liability, is the immaterial and insignificant fact that the defendants in Marshall were federal and the defendants in the instant case are county. There is no valid distinction between seeking a remedy

for constitutional violations under Section 1983 in the instant case and seeking a judicially-fashioned remedy under the rule of the Bivens case in a case such as Marshall. In both kinds of cases, justice is necessary and the source of the remedy as statutory or judicially-fashioned is immaterial. Ibid. The Supreme Court has implied this opinion as to immateriality and insignificance between the statutory remedy of Section 1983 and the judicially-fashioned remedy of Bivens. See Illinois v. City of Milwaukee, 406 US 91, 92 S.Ct. 1385 (1972); Butz v. Economou, 438 US 478, 500, 502, 98 S.Ct. 2894, 57 L.Ed. 2d 895 (1978); Davis v. Passman, 442 US 228, 242, 243, 99 S.Ct. 2264 (1979); Bolling v. Sharpe, 347 US 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954), and 349 US 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955); City of Kenosha v. Bruno, 412 US 507, 513, 514, 516, 93 S.Ct. 2222, 37 L.Ed. 2d 109 (1973). Also, seven of the eleven

Circuits of the United States Courts of Appeals are in agreement with the implications and statements of the Supreme Court and these Circuits are in direct conflict with the Ninth Circuit in the instant case. See Kostka v. Hogg, 1st Cir., 1977, 560 F.2d 37; Turpin v. Mailet, 2nd Cir., 1978, 579 F.2d. 152; Skehan v. Board, 3rd Cir., 1974, 501 F.2d. 31; Reeves v. Jackson 5th Cir., 1976, 532 F.2d. 491; Sixth Circuit: Foster v. Herly, 1964, 330 F.2d. 87; Hanna v. Drobnick, 1975, 514 F.2d 393; Jones v. Memphis, 1978, 586 F.2d 622; Gordon v. City of Warren, 1978, 579 F.2d 386; Calvin v. Conlisk, 7th Cir., 1975, 520 F.2d 1; Owens v. City of Independence, 8th Cir., 1977, 560 F.2d 925; Nix v. Sweeney, 8th Cir., 1978, 573 F.2d. 998.

Petitioner made these arguments in the District Court and the Court of Appeals and both Courts rejected these arguments, disregarding the contrary implication of

the Supreme Court and the seven circuits in the above cases.

POINT 5

CONSTITUTIONAL LIABILITY OF FEDERAL DEFENDANTS UNDER EQUAL PROTECTION, DUE PROCESS, FREEDOM OF SPEECH, AND RIGHT TO PETITION IS THE SAME LIABILITY AS COUNTY GOVERNMENT DEFENDANTS, ALTHOUGH ARISING FROM DIFFERENT CONSTITUTIONAL PROVISIONS

Federal defendants are liable for violation of equal protection and due process under Amendment V of the Constitution. Federal defendants are liable for violation of freedom of Speech and right to petition under Amendment I of the Constitution. County defendants are liable for violations of equal protection and due process under the Amendment XIV of the Constitution and are liable for violation of freedom of speech and right to petition under Amendment I and Amendment XIV of the Constitution.

Although the source of due process and equal protection liability is different for federal and county defendants and the source of freedom of speech and right to petition is partially different for federal and county defendants, the quality of the liability and corresponding rights is the same. Ibid. Therefore, it does not matter whether the source of equal protection and due process is Amendment V as in the case of Marshall v. Kleppe, supra, or Amendment XIV as in the instant case. The same is true for the sources of freedom of speech and right to petition. Ibid. This distinction and limitation of the Marshall case by the Ninth Circuit as applied to the instant case is not valid. Likewise, the distinction of the two statutes of limitation based upon whether the defendants happen to be federal or county is also not valid. Ibid. Liability of both federal and county defendants are the same and the statute of

limitation should be the same. The applicable California statute of limitation in the instant case is Section 343 CCP, and not 338-1 CCP, because the former applies to liability created by Constitution and the latter does not.

POINT 6

THE REMEDIES AFFORDED AGAINST FEDERAL DEFENDANTS UNDER THE AUTHORITY OF THE CASE OF BIVENS AND OTHERS ARE THE SAME REMEDIES AFFORDED AGAINST COUNTY GOVERNMENT DEFENDANTS UNDER THE AUTHORITY OF SECTION 1983 OF TITLE 42 OF THE UNITED STATES CODE.

The case of Bivens v. Six Unknown etc., 403 US 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) granted a damages remedy based on compensable actual damages and did not prohibit equitable remedies in the appropriate case such as the instant case. Equitable remedies are allowed in a federal case based upon federal sustantive liability based upon the Constitution or federal

substantive statutes. Bolling and City of Kenosha, supra. Both of the latter cases express or imply equitable remedies against federal defendants and also subdivisions of a State such as a City or County even where Section 1983 is not available. See City of Kenosha, supra, 412 US, at pp. 513, 514, and 516.

Section 1983 grants both legal and equitable remedies against county defendants for constitutional ard substantive statutory violations. Ibid. There is no difference between the equitable remedy of injunction against federal defendants implied and expressed by Bolling and City of Kenosha and the equitable remedy of injunction as declared against county defendants by Section 1983. Therefore, the distinction and limitation of the Marshall case by the Ninth Circuit in the instant case, regarding judicially-fashioned remedies against federal defendants and statutory remedies against county defendants, is not valid.

Likewise, the distinction of the two statutes of limitation is not valid. Ibid. The applicable statute of limitation should be the four-year period under Section 343 as analyzed in Point 5, supra. The contrary rule in the instant case conflicts with the implications of the Supreme Court and the seven Circuits, stated above.

Wherefore, Petitioner requests the Court to grant a Writ of Certiorari to the United StatesCourt of Appeals for the Ninth Circuit.

March 8, 1986

San Diego, California

Sanford J. Margulis

SANFORD J. MARGULIS
Petitioner, Pro Se
1839 Madison Avenue
San Diego, CA 92116
(619) 295-8657

APPENDIX

The Memorandum Opinion and Judgment of the Court of Appeals for the Ninth Circuit, No. 84-5568, District Court No. CV 83-0705-K, as follows:

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED DEC. 11, 1985, Clerk, US. Court of Appeals

SANFORD J. MARGULIS,

Plaintiff-Appellant, No.84-5568

v.

JEAN MILLER, MORRIS R. PION, LARRY COOK FRANCIS J. KILCOYNE, LAWRENCE ADAMS, CLARENCE BOYD, JR., DARLEE CROCKETT, MERRILL GROAT, and others,

Defendants-Appellees.

MEMORANDUM*

Appeal from the United States District Court for the Southern District of Cal-

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except

ifornia Judith N. Keep, District Judge, Presiding, Argued and Submitted November 4, 1985, San Diego, California

Before: BROWNING, Chief Judge, WIGGINS and BRUNETTI, Circuit Judges.

Margulis appeals the dismissal of his section 1983 action, 42 U.S.C. Section 1983 (1982), as time-barred. We affirm.

On April 13, 1983, Margulis brought suit in the district court against various employees of San Diego County, alleging that he had been terminated from his employment with the county in violation of his first and fourteenth amendment rights. Following a dismissal without prejudice for failure to state a claim, Margulis filed an amended complaint alleging causes of action under section 1983 (1982). On February 6, 1984, the court dismissed the amended complaint with prejudice on the ground that the face of the complaint

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* as provided by 9th Cir. R. 21.

revealed the action was barred because it had been filed four years after the cause of action accrued (Margulis's termination on April 13 or 14, 1979), whereas the appropriate statute of limitations specified a three-year limitations period, Cal. Civ. Proc. Code Section 338(1) (West 1982) (limitations period for actions based on liabilities created by statute).

The only issue on appeal is whether the district court applied the correct statute of limitations in declaring the section 1983 action time-barred. The selection of the relevant legal principle is a question of law and is reviewed by this court de novo. United States v. McConney, 728 F.2d 1195, 1200-01 (9th Cir. 1984) (en banc).

In entertaining section 1983 actions, federal courts apply the statute of limitations applied to the most analogous cause of action under the law of the state in which the federal cause of action arose.

Jackson v. Hayakawa, 605 F.2d 1121, 1127 (9th Cir. 1979); Bradshaw v. Zoological Society, 569 F.2d 1066, 1068 (9th Cir. 1978). Margulis argues that section 1983 is remedial in nature, that is, it creates no liabilities itself, but merely provides a remedy for liabilities created (in this case) by the constitution. Thus, he argues, the statute of limitations applicable to the most analogous state cause of action is Cal. Civ. Proc. Code Section 343 (West 1982), which specifies a four-year limitations period for actions for which a limitations period has not otherwise been provided. This court has employed section 343 as the the statute of limitations for a Bivens-type action under the fifth amendment. Marshall v. Kleppe, 637 F.2d 1217, 1223-24 (9th Cir. 1980).

Margulis's arguments regarding the nature of section 1983 are interesting but ultimately unavailing. At the time the

action was dismissed, it was settled law in this circuit that the statute of limitations to be applied to section 1983 actions arising in California was section 338(1) (three-year limitations period). Ward v. Caulk, 650 F.2d 1144, 1147 (9th Cir. 1981); Jackson, 605 F.2d at 1127. None of the cases cited by Margulis can be read as overruling Ward or Jackson.

Subsequent to the dismissal of Margulis's complaint, the Supreme Court held that the best analogue for section 1983 suits was the appropriate state statute of limitations for personal injury actions. Wilson v. Garcia, 105 S. Ct. 1938, 1947-49 (1985). The Court reasoned, as does Margulis, that state statutes of limitations for actions based on liabilities created by statute are inappropriate for section 1983 actions because many section 1983 actions are based on non-statutory rights and section 1983 itself is remedial, not substantive, in nature. Id. at 1948.

We need not consider whether Wilson should be applied to the present case, however, because the statute of limitations that would be applied under Wilson, Cal. Civ. Proc. Code Section 340(3) (West 1982) (one-year limitations period for personal injury actions), is shorter than the statute applied by the district court.

AFFIRMED.